

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

HCT-00-CR-CM NO. 0036 OF 2021

[ARISING OUT OF HCT- CR. 0767- 2020)

KABAROLE PATRICK=====APPLICANT/ACCUSED

VERSUS

UGANDA=====RESPONDENT/PROSECUTOR

BEFORE HON. JUSTICE TADEO ASIIMWE

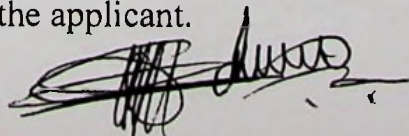
RULLING

This is an application for bail pending trial and is brought by way of Notice of Motion under Article 23 (6)(a) of the Constitution, S. 14 (1)(a) of the Trial on Indictments Act and rule 2 of the Judicature (Criminal Procedure) (Applications) Rules S.I. 13-8.

The applicant is indicted with the offence of Aggravated Robbery contrary to section 285 and 286 of the penal code Act.

The grounds of the application as presented and supported by the affidavit of the applicant are as follows;

1. That the applicant will not abscond once released on bail
2. That the applicant has a fixed place of a bode within the jurisdiction of this honorable court.
3. That the applicant has substantial and dependable sureties who are ready and willing to ensure he returns to court to face his trial as and when required.
4. That there are no further charges pending against the applicant.



5. That this court has power to grant him bail
6. That it is just and fair that this application is allowed and the applicant be released on bail.

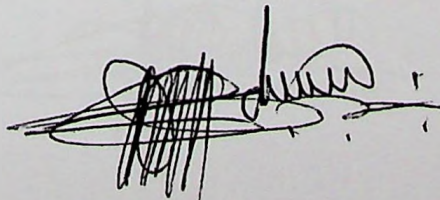
At the hearing, the applicant was represented by counsel Padoko Gerald holding brief for Katumba Chrisestom While the respondent was represented by Tukamushaba Amelia State attorney from ODPP. Counsel for the applicant made written submission filed on 25/02/2021 and made oral highlights of his submissions while the respondents counsel made oral submissions which I shall consider in this ruling.

In his submissions, counsel for the applicant argued that the the applicant is innocent and is entitled to a speedy trial. That the applicant committed on 25/08/2020 and no trial has commenced and that he is not sure when he will be tried. That the applicant has a fixed place of abode within the jurisdiction of this court and will not abscond. That court has powers under section 14 of the T.I.A to grant the accused person bail in its discretion and that it is not mandatory to prove exceptional circumstances.

On sureties, he submitted that the applicant has substantial sureties viz- Namudu Sca a friend and business partner and Ssekatawa Henry who he referred to as brother to the applicant and both have undertaken to fulfill their duties.

In reply, the learned state attorney submitted opposed the application arguing that the applicant is charged with aggravated robbery which took place with personal violence and that the applicant has not proved exceptional circumstances. She also objected to the 2nd surety whose documents were not verified.

In rejoinder the applicants counsel argued that this court has discretion to grant bail even when no exceptional circumstances are proved.

A handwritten signature in black ink, appearing to be 'Gerald Padoko', with a large, scribbled-out area below it.

RESSOLUTION.

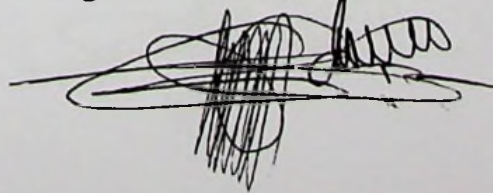
The rationale behind the grant of bail is in respect to upholding one's right to personal liberty. This is especially the product of the presumption of innocence as protected under Article 28 (3) of the Constitution of the Republic of Uganda. This was emphasized in the case of **Abindi Ronald and Anor v Uganda Miscellaneous Criminal Application No. 0020 of 2016**

“Under Article 28 (3) of the Constitution of the Republic of Uganda, every person is presumed innocent until proved guilty or pleads guilty. Consequently, an accused person should not be kept on remand unnecessarily before trial.”

A bail applicant must not be deprived of his/her freedom unnecessarily or as merely punishment where they have not been proved guilty by a competent court of law.

This principle of protection of personal liberty was further cemented in the case of **Col (Rtd) Dr. Kizza Besigye v Uganda Criminal Application No.83 of 2016** wherein court stated that court has to consider and balance the rights of the individual, particularly with regard personal liberty...”

The Court's discretionary powers to grant bail are enshrined under **Section 14 (1) of the Trial on Indictments Act** and the conditions under which bail is to be granted under Section 15. These circumstances are broken down to proof of exceptional circumstances like grave illness, a Certificate of no objection from the Director of Public Prosecution, infancy or advanced age; and the fact that the accused will not abscond to be proved by the accused having a fixed place of abode, sound sureties, among others. However, it is trite law that proof of exceptional circumstances is not mandatory requirement as courts have the discretion to grant bail even when the exceptional circumstances have not been proved.

A handwritten signature in black ink, consisting of several overlapping loops and lines, positioned at the bottom right of the page.

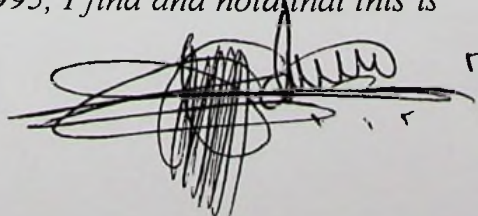
Court is not mandatorily supposed to grant bail on the basis of proof of exceptional circumstances. The discretion depends on the circumstances of the case. This was the position in the case of **Ssemanda Alex Button vs Uganda Criminal application no 157 of 1999**. Where justice **Egonda Ntende** held that section 14A of the TID which is now (S.15 TIA) is not mandatory barring consideration of release on bail of an accused where no exceptional circumstances have not been shown. The discretion is left with the court to determine whether in the circumstances of that case exceptional circumstances would be required for consideration of the release of the accused on bail.

Hon. Justice Stephen Mubiru in the case of **Abindi Ronald and Anor v Uganda** was of the view that "An applicant should not be incarcerated if he has a fixed place of abode, has sound sureties capable of guaranteeing that he will comply with the conditions of his or her bail."

In this application, the state Attorney objected to the 2nd surety for reasons that his documents were not verified. This court too undercrosss examination, discovered that the said surety was not a brother of the applicant as was stated. I am not convinced that he is a substantial surety who will monitor the accused and ensure complainant complies with his bail conditions.

Court in the case of **Mugisha Ronald V Uganda HCT- 01-CR-CM-NO-050 of 2018** while granting an application for bail stated that;

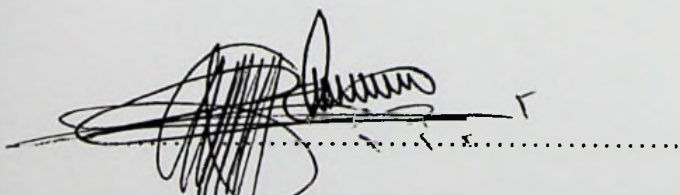
"Since the sureties appear responsible persons who will ensure the accused returns to court to stand trial, and in view of the presumption of innocence under Article 28 (3) of the Constitution of the Republic of Uganda, 1995, I find and hold that this is a fit and proper case to grant bail to the Applicant."

A handwritten signature in black ink, appearing to be a stylized name, located at the end of the quoted text.

In this case, although the applicant has a fixed place of abode within the jurisdiction of this court, the 2nd surety is not substantial. However, the circumstances surrounding the offence were not cruel as accused was arrested on the basis of being found in possession of the complainant's phone. I find this a proper case for me to exercise my discretion in favor of the applicant. Although the 2nd surety not substantial, the applicant in his submission presented a one Muyambi Pancras as a brother to the applicant who should be verified by the Deputy registrar in the presence of the state Attorney to be the 2nd surety in the event he is still willing to stand surety for the applicant.

For the above reasons I find merit in this application and the same is hereby allowed with the following order.

1. The applicant shall deposit a sum of 1,000,000/- (one million) cash.
2. Each of the two sureties is also to be bound in the sums of UGX 20,000,000/- (twenty Million) not cash.
3. If the above 2 term are fulfilled, the applicant be released and she will be required to report to the Registrar of the Criminal Division once every month from the date of this ruling.



TADEO ASIIMWE

JUDGE

7/04/2021